IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 484 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD AMIN ABDUL KHALIQ

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 484 of 1999

MR JM BUDDHBHATTI for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR BY MANDKAD APP for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 08/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.H.MEHTA)

#. Original accused No. 1 - Mahmad Amin Abdul Khaliq Bhatt of Sessions Case No. 10 of 1997 has, by preferring this appeal under Section 374 (2) of the Criminal Procedure Code, 1973 (for short "Cr.P.C.") challenged the correctness and legality of Judgement Ex.86 dated 25.2.1999 rendered by the Additional Sessions Judge, Court No. 16, City Civil Court, Ahmedabad rendered in Sessions Case No.10 of 1997 by which, he has been convicted for an offence punishable under Section 8 read with Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act" for short) and sentenced to undergo R.I. for 12 years and to pay a fine of Rs.2 lacs and in default of fine, to undergo further R.I. for one year.

#. The facts leading to this present appeal in a nutshell are as follows :-

2.1 On or about 17th October, 1996, the complainant Shri R.H. Rathod, Police Inspector, Crime Branch, Ahmedabad City was present on duty, in his office. At about 8 A.M. his colleague P.S.I. Shri A.F. Sindhi and P.S.I. Shri C.N. Rajput disclosed to him a secret information that one jeep bearing No. DHD-1658 of covered body being driven by one Kashmiri person was to enter into Ahmedabad City via Ahmedabad-Sarkhej High way road, by passing Vasna Octroi Cabin. That secret information was to the effect that that Kashmiri person was to import illegally "Charas" in big quantity in bulk from Kashmir and that person was to arrive at during the period from 10-00 A.M. to 12-00 noon.

2.2 The complainant made a note of that secret information on one piece of paper. Information with regard to that secret information was given by complainant to his superior D.C.B.. It was decided to keep close watch by making a patrolling just near Vasna Bus stop, Opp. "Dev Darshan Flats". Therefore, complainant called two persons to act as panch witnesses. They were made to understand about the information and raid, which was to be made with regard to aforesaid jeep. The police persons and panch witnesses had taken search of each other inter-se. No contraband article was found from either the police persons or the panch witnesses. A preliminary panchnama was drawn for such formalities performed during the period from 08.20 AM to 08.50 AM before proceeding further to Vasna Bus Stand.

2.3 Police persons and panch witnesses by driving in Gypsy vehicle arrived at "Dev Darshan" Complex. Complainant parked the police vehicle just in one corner near Dev Darshan Complex in such a way that car was facing road side. The police persons and panch witnesses took their respective positions on the road. Police Constable Abdul Majid Yasinkhan Pathan stood at a distance of 150 meters from that place where the complainant was standing. That police constable Abdul Majid Pathan was directed to give signal as and when he finds jeep bearing No. DHD-1658 coming from Vasna Octroi Cabin side.

2.4 After about one hour, one jeep of covered body was found coming from Vasna Bus Stand side. Police Constable Pathan gave a signal on seeing the jeep, as per directions given to him earlier. The complainant had shown that jeep to the panch witnesses. The number of the jeep i.e. DHD-1658 was noted down by the complainant and his staff members in presence of panch witnesses. On jeep coming to a halt condition, it was found that one person was found sitting on the driver's seat. That person was asked to stop the jeep. He was asked to give his name and address. That person gave his name as Mahmad. Amin Abdul Khaliq Pathan, resident of Srinagar (present appellant). He has informed of about the information with regard to narcotic substance and other contraband articles like "Charas", being carried / transported in his jeep. He was informed of about his right to be searched for his person as well as jeep in presence of either Executive Magistrate or any Gazetted officer other than officer of police department. Person sitting on driver's seat of jeep No. DHD-1658 declined to exercise said right. Thereafter, the complainant and members of raiding party and panch witnesses gave their respective introductions to the appellant. He was also asked to take search of police persons as well as panch witnesses, if he wanted to do so. He declined to take such search. Thereafter, a search of 'person' of appellant was made in presence of panch witnesses. On making search, one driving licence, currency notes of Rs.1320/-, bills for purchase of diesel for vehicle No. DHD - 1658 and other bills were found from the appellant. Thereafter, on making examination of jeep, it was found that portion beneath the driver's seat of the jeep, was giving a bitter smell of "Charas". The appellant was asked to open the portion beneath his seat. He opened that portion of seat by loosening nuts and bolts. It was found that there were about five packets arranged in a line in portion just beneath the driver's seat. Out of five packets, four packets were found wrapped in news

paper and in one packet, one lump of black coloured substance was found. Thereafter, all the four packets were opened and it was found that each packet was containing a lump of black coloured solid substance. Mean while, one Scientific Officer Shri G.D. Sharma of Forensic Science Laboratory (hereinafter referred to as "F.S.L" for short) arrived at the spot and he gave his preliminary opinion that, that substance was "Charas". The appellant was asked as to from which source, he brought that "Charas". The appellant answered that he had brought that substance from Kashmir. That substance was weighed and it was found that it was weighing about 48.500 Kgs. and its price was estimated at Rs.14,55,000/- (Rs. Fourteen lacs Fiftyfive Thousand only). Thereafter, representative samples of that "Charas" was taken as per the procedure prescribed. That samples were properly packed and duly sealed with seal of Inspector of Police, Crime Branch, Ahmedabad City. Thereafter, panchnama in detail was drawn and it was completed at about 15.30 hours. The appellant was arrested and a written information with regard to grounds of his arrest was given to him. On making interrogation of appellant, he informed the police that another person who was present there in the jeep was Basir Omar Rasulbhai Shaikh (Accused No.2) (who is not before this Court). Necessary report was also made to the Metropolitan Magistrate. Thereafter, complainant prepared his complaint with the help of his Writer Constable Nanjibhai. The complainant then reached to D.C.B. Police Station and he took over the charge of P.S.O. from Head Constable Madhukar Patil. Thereafter at about 15=30 hrs. the complainant lodged his complaint in the police station. That complaint came to be registered as CR No.34/96. He made necessary entries in the station diary. Thereafter, he handed over muddamal articles and articles seized from appellant to Writer Head Constable Shri Gulabbhai. He also handed over the custody of appellant to P.S.O. Thereafter, P.S.I. Shri Sindhi was entrusted with further investigation of the case. On completion of investigation, on 07.01.1997 the police filed chargesheet against aforesaid two accused in the City Civil and Sessions Court. That chargesheet came to be registered as Sessions Case No. 10/97.

#. The learned Additional Sessions Judge, Court No. 3, City Civil Court, Ahmedabad framed a charge Ex. 5 against both the accused on 26th August, 1987. On recording plea of accused, both the accused pleaded not guilty to the charge and claimed to be tried.

3.1 It appears from the record that during the

pendency of the case, accused No. 2 had started to remain absent and later on he was declared to be as an absconder-accused and therefore, on 15.12.1998 learned APP before the Trial Court submitted an application Ex.54 with a request to separate the trial against accused No. 2 from trial against accused No. 1, supported with an affidavit of P.I. Shri M.B. Solanki of DCB Police Station, Ahmedabad. The learned Judge of the Trial Court after hearing the learned advocates for both the parties, passed an order dated 1.1.1999 below Application Ex.54, by which, trial of accused No. 2 was ordered to be separated from trial against accused No. 1 as per provisions of Section 317 (2) of the Cr.P.C.

3.2 Thereafter, prosecution examined eight witnesses to prove their case against appellant. The prosecution produced necessary documentary evidence also in support of their case against appellant. On completion of recording of evidence of prosecution witnesses, the learned Judge of the Trial Court brought to the notice of and explained to the appellant the circumstances appearing against him in the evidence led by the prosecution. The appellant has denied practically the entire case of the prosecution. In his further statement, he stated to the Court that he has no information with regard to contraband articles seized from the jeep. He has admitted that in his bag, there were about two to three shirts, his licence, identity card and some currency notes. He has also stated in his further statements that jeep was not being driven by him but it was being driven by Basir (accused No. 2). In the last question put him in his further statement u/s. 313 Cr.P.C. he has submitted his defence that on the date of incident he had gone to house of his friend residing in Sarkhej area. He had put up at his friend's house on the previous night and on the next day, i.e. on the date of incident, in the morning on foot, he came on Sarkhej Road. He had to go towards "Tran Darwaja" (Three gates) area and therefore, he, by showing a signal by raising hands, made to halt one jeep. On that day, he was not knowing the name of the driver, who was driving the jeep but later on he knew the name of driver i.e. Basir (accused No. 2). Thereafter, he took his seat in the jeep. At that time, he had a bag which could be placed on his shoulder. Thereafter, at the place of scene of offence, jeep was made to halt. He came to know that the persons who made the jeep to halt were police persons. Thereafter, Basir (accused No. 2) got down from the jeep. He had some talk with police persons. Police persons allowed him to go away. Meanwhile he was sitting in the jeep. Police persons, thereafter, took

him on the road. He was severely beaten by the police officers. Thereafter, he was taken to police station. He further stated that he was not knowing Gujarati and therefore, he was not knowing about procedure followed by police. He was never told for search being made in presence of a Magistrate. Jeep was being driven by Basir and that Jeep was not of his ownership. He is not knowing anything about the muddamal articles seized. Lastly, he stated in his further statement that a false case has been lodged against him. Immediately, thereafter, the learned Judge of the Trial Court has made an endorsement below further statement of accused that as per say of accused No. 1, he is not knowing Gujarati and therefore, all the questions put in further statements were asked in Hindi language to accused No. 1 in presence of his advocate and whatever the replies were given by the accused No. 1, were given by him in Hindi and court translated that replies and same were recorded in the further statement.

Thereafter, learned Judge of the Trial Court heard the arguments of the learned advocates of both the parties and after appreciating the evidence led by the prosecution, she came to a conclusion that accused No. 1 was found to have in possession of 48.500 Kg. Charas illegally in the jeep bearing registration No. DHD 1658 and thereby, he has committed an offence punishable under Section 8 read with Section 20 of the NDPS Act. Thereafter, the learned Judge of the Trial Court rendered her judgement of conviction on 24.2.1999. Thereafter, the accused No. 1 was heard on the point of quantum of sentence and thereafter, the learned Judge of the Trial Court passed an order of conviction and sentence on 25.2.1999 by convicting the accused No. 1 to suffer R.I. for 12 years and to pay a fine of Rs. 2 lacs and in default of fine, to undergo further R.I. for one year.

#. Being aggrieved against and dissatisfied of the said judgement of conviction and sentence, the original accused No. 1 has preferred this present appeal.

#. Shri J.M. Buddhbhatti, learned advocate for the appellant has taken us through the entire record of oral as well as documentary evidence and impugned judgment challenged in this appeal. We have heard learned advocate Shri J.M. Buddhbhatti, for the appellant and Mr. B.Y. Mankad, learned APP for the respondent - State.

#. Shri J.M. Buddhbhatti, learned advocate for the appellant has taken two contentions for challenging the

judgement of conviction and sentence.

(i) It is the case of appellant from the very beginning that he is not knowing Gujarati and that he knows only Kashmiri Hindi and therefore, whatever procedure followed by the police while searching the jeep and recovering the articles from Jeep as well as person of appellant No. 1, was not made known to the appellant in Hindi language and therefore, he knows nothing about the information given to him for his right to be searched in presence of either Gazetted officer or a Magistrate. He has further argued that looking to the evidence given by police officers and the documentary evidence, we find that all the procedure was followed in Gujarati and therefore, a serious prejudice has been caused to the appellant as a result of failure on the part of the police officer to inform him about his right to be searched in presence of either Gazetted officer or Magistrate. He has also strenuously argued that this is a case in which, provisions of Section 50 of the NDPS Act are not complied with and therefore, the impugned judgement is bad, in eye of law and therefore this appeal should be allowed and appellant should be acquitted.

(ii) The second contention of Mr. Buddhbhatti, the learned advocate for the appellant is to the effect that the learned defence advocate for appellant, who represented the appellant in the Trial Court had submitted one application Ex. 43 on 1st September, 1998 with a request to court to appoint one interpreter, who can translate the deposition of each witness from Gujarati to English and Kashmiri Hindi language. That application was given on the grounds that accused No. 1 is belonging to Kashmir and he is unable to read and write Gujarati and further that he is not able to read and write Hindi. That application Ex. 43 was heard and decided on merits on 1st September, 1998. As the learned Judge of the Trial Court rejected that application Exh.43, accused No. 1 has been denied his valuable right to be defended properly. He has further argued that the learned Judge of the Trial Court, when she recorded further statement of the accused under Section 313 of the Cr.P.C., put a specific note at the bottom of further statement on 11.2.1999 that as per say of accused No. 1, he is not knowing Gujarati and therefore, all the questions put to him in further statement were asked to accused No. 1 in Hindi in presence of his advocate and whatever replies were given by accused, were given in Hindi and that replies were translated by the Court and as a result of such translation is being made, the said statement of the accused has been recorded. Shri

Buddhbhatti has argued that a serious prejudice has been caused to appellant because as per his request, vide application Ex.43 services of interpreter were not taken by the learned Judge of the Trial Court as a result of which, he could not understand the depositions of witnesses recorded in Gujarati. He further argued that as a result of such failure on the part of the Trial Court, he could not give proper instructions to his advocate and thereby, a prejudice has been caused to him and on this count, the impugned judgement is null and void and on the basis of such judgment, the appellant could not be convicted and sentenced. He has further argued that looking to aforesaid contentions, this appeal deserves to be allowed and appellant be acquitted of the offences for which, the charge has been framed.

#. Shri B.Y. Mankad, learned APP for Respondent State has supported the judgement of the trial Court. He has argued that when the charge was framed on 26th August, 1997, the appellant did not disclose to the court that he is not knowing Gujarati. He has further argued that though the application Ex. 43 was given for an appointment of interpreter, the learned Judge of the Trial Court by giving reasons passed a judicial order and rejected the said application. The said judicial order passed below application Ex. 43 is at pages No. 237 to 241 in paper book. From the record, it seems that said order has not been challenged by the appellant and that judicial order stands as it is. He has further argued that subsequent to recording plea of accused and after framing charge, the accused No. 1 submitted an application Ex. 10 on 4.12.1997 by which, he requested the trial Court to render a legal aid for his defence. By order dated 27.12.1997 vide Ex.13, one practising advocate Shri V.T.Aacharya was appointed as an advocate to defend accused No. 1 and that appointment was made as per the provisions of para 126 of the Criminal Manual. From the record, it appears that, the appellant has been defended right from the beginning to end of trial through this advocate Shri V.T. Aacharya and therefore, his case has been properly defended. Under the circumstances, it cannot be said that prejudice has been caused to appellant because of that fact that interpreter was not appointed as per his request. Shri Mankad, learned APP has further argued that at the best, it can be said to be a mere irregularity and said irregularity can be cured under Section 465 of the Cr.P.C. In support of his arguments, Shri Mankad has cited two authorities. (i) CHHOTU VS. STATE OF GUJARAT, reported in AIR, 1967 Gujarat p.115 and (ii) SHIV NARAYAN KABRA VS. STATE OF MADRAS, reported in AIR 1967, SC, p.986. Lastly, he

requested this Court that there is no error committed by learned Judge of the Trial Court and looking to the contentions taken by Shri Buddhbhatti in no case, it can be said that the learned Judge has committed an error in convicting and sentencing the accused and therefore, this appeal deserves to be dismissed confirming the impugned judgement.

#. We have anxiously considered the submissions made by the learned advocates for the parties. We have reappreciated the evidence led by the prosecution.

8.1 First, we will consider the contention of Shri Buddhbhatti,learned advocate for the appellant on the point that when search of jeep was made, the complainant and the members of the raiding party carried out the procedure in Gujarati and that panchnama was also drawn in Gujarati and as accused is not knowing Gujarati, it is not proved by the prosecution that provisions of Section 50 of the NDPS Act were complied with before search. It may be noted that a secret information was received by the complainant that one person was to bring narcotic substance by a jeep with covered body. That information was reduced into writing. Copy of that information was sent to a superior officer of complainant. That copy is at Ex.62. As per this Ex.62, it is clear that the complainant had received an information that one person from Kashmir was to import illegal Charas in bulk and big quantity for the purpose of business in Ahmedabad and for that, that person was to enter into Ahmedabad City by jeep No. DHD-1658 by travelling on Sarkhej High way road via Vasna Octroi Cabin. From this Ex.62, two things were certain (i) narcotic substance namely Charas was to be imported in a bulk and big quantity by a jeep bearing number DHD - 1658 and (ii) that quantity of Charas was being brought from Kashmir to Ahmedabad for business purpose and therefore, concentration of complainant was to search jeep and not the "person" of that man of Kashmir. There is no dispute with regard to fact that on 17.10.1996 a preliminary panchnama was drawn during the period from 8.20 a.m. to 8.50 a.m. The complainant and members of his raiding party reached to Dev Darshan Complex, near Vasna Octroi Cabin. One hour thereafter, jeep came and it was made to halt and accused was found sitting on the driver's seat of jeep. As per the answer given to last question put in his further statement, accused No. 1 admitted that he was sitting in the jeep. As per his defence, the absconding accused Basir was sitting on the driver's seat of the jeep. Naturally, if the big quantity of charas in bulk was suspected to be brought in jeep, question does not arise for search of

"person" of accused. Section 50 of the NDPS Act is applicable to only case, in which, "person" of the suspect is to be searched. For a vehicle, provisions of Section 49 of the NDPS Act are applicable. This position is made clear in case of DASHRATHBHAI GOVINDBHAI SHAH AND ANOTHER VS. STATE OF GUJARAT, reported in 1998 (2) GLH, p.790.

8.2 Shri J.M. Buddhbhatti, learned advocate for the appellant has argued that in this case "person" of the appellant was searched. It is an admitted fact that no contraband article was found from the "person" of the appellant and therefore, question does not arise for making appellant known about his right to be searched in presence of either Gazetted Officer or Magistrate. In this case, the complainant has deposed that the appellant was informed of by him that they wanted to search jeep as they had information that certain quantity of charas was being brought in jeep and for that a search was to be made. They also informed of the appellant that necessary arrangement could be made, if search was required to be made by him in presence of either Executive Magistrate or a Gazetted Officer. Shri Buddhbhatti has argued that information with regard to right of appellant to be searched in presence of Gazetted Officer or Magistrate, was not given to him in Hindi and therefore, even if, information was given to him in Gujarati, it cannot be said that provisions of Section 50 were complied with. When complainant had deposed that he informed of the appellant about his right to be searched in presence of Gazetted Officer or Magistrate, then that fact is not to be doubted. The complainant was knowing from beginning that the person, who was to come by jeep was a Kashmiri person and therefore, he would have certainly informed of the appellant by informing him about his right, in Hindi.

#. During the course of hearing, Mr. Buddhbhatti, learned advocate appearing for the appellant-accused has, while taking us through the paper book consisting of oral as well as documentary evidence as well as while taking us through the judgement under challenge, has contended that the learned Trial Judge was not right in accepting the prosecution case by convicting the accused, as according to him, when the statement of the accused under Section 313 of the Cr.P.C. was recorded by the learned Trial Judge and as found that the accused was not knowing Gujarat language and accordingly, the learned trial Judge in presence of the advocate of the accused had posed questions to the accused in Hindi language and after answering the questions by the accused in Hindi language, the same were translated into Gujarati by the Court

itself and the same were recorded in Gujarati language. In view of this, Mr. Buddhbhatti has vehemently urged that as the accused was not knowing Gujarati language, the steps taken by the investigating agency at the initial stage, which is reflected in Gujarati and the same is accordingly not explained to the accused in language known to him and as the appellant-accused is a Kashmiri and the said contention was taken at the initial stage by the learned advocate, who appeared for the accused by filing application for appointment of interpreter, which came to be turned down by the learned trial Judge. We have accordingly, as per order dated 5th July, 2002 had directed the Jail Authority to produce the appellant-accused before this court today at 11-00 a.m. with the medical case papers of the prisoner showing whether any treatment has been provided to the appellant-accused from the day one namely from the date of his arrest or even thereafter, in view of the answer given by the accused in the statement recorded under Section 313 of the Cr.P.C. and to examine the contentions of Mr. Buddhbhatti about the language as the appellant accused does not know Gujarati language as he is from Kashmir and he knows only Kashmiri Hindi. Accordingly, Jail Authority has under police escort produced the appellant-accused before us with medical case papers of the accused showing the treatment given to him. However, as found from the medical papers, due to ailment of the appellant-accused, he was provided medicine as per the medical advise and the period was found is of the years 2000 and 2001. As there is no record to show that the treatment was not provided to the accused immediately after his arrest, as according to the accused, he was illtreated and beaten by the police authority immediately after his arrest. However, there is nothing on record to suggest that the police authority has beaten the appellant and illtreated the appellant after his arrest and we have also verified the original records regarding a fact as to whether the appellant-accused was produced within 24 hours after his arrest before the learned Magistrate and at that time also, no complaint about any illtreatment was made by the appellant and accordingly, to ascertain whether the appellant-accused is knowing the Hindi language in view of the statement recorded by the learned Trial Judge under Section 313 of the Cr.P.C., we have posed questions to the accused, who was before us for more than 35 minutes and we have ascertained from him by putting questions in Hindi. As found from the accused, he understands Hindi language and the questions posed to him. It is further found from him that even prior to last visit when he was arrested, he had visited Gujarat

for about 6 to 7 times and he had stayed in guest house situated in Ahmedabad. When we posed a question about his apprehension by the police in this offence and as found from the panchnama and other documents to show that investigating agency had drawn documents in Gujarati, the appellant accused in term admitted that what ever steps taken by the investigating agency at the time of his apprehension and while drawing panchnama and other documents though the same were recorded in Gujarati for the offences levelled against him, he was appraised of in Hindi language i.e. language known to him. However, before us, it is his say that the appellant was falsely impleaded in the offence and he is innocent. As we have satisfied ourselves that the appellant-accused understands Hindi language and further at the time when the appellant accused was apprehended by the police, though the documents were found in Gujarati namely panchnama etc. and the contents of the panchnama etc were duly explained by the officer to the appellant in the language known to him namely in Hindi. Accordingly, we have examined the evidence led by the prosecution in light of the fact that the accused was knowing Hindi language and he was also explained about the contents of the panchnama, etc. which were duly explained by the police officer to the appellant-accused in the language which he knew namely in Hindi. Accordingly, we have examined the evidence led by the prosecution in light of the fact that the accused was knowing Hindi language and he was also explained about the contents which were recorded in Gujarati by the investigating agency and the facts, which were recorded before the Court.

##. In view of what is stated hereinabove, we are of the view that Section 50 of the NDPS Act is not attracted to the present case because police searched the jeep in which, the appellant was travelling. For a moment, if it is believed that Section 50 of the NDPS Act is applicable to this case, then also the police officer had explained all the requirements of Section 50 of the Act to the appellant in Hindi. The appellant has specifically stated before us when he was called before this Court that when he was apprehended by the police in this offence and as found from the panchnama and other documents to show investigating agency had drawn panchnama and other documents etc. in Gujarati, he was explained by police officers in Hindi. The appellant accused in term admitted that whatever steps taken by the investigating agency at the time of his apprehension and while drawing panchnama though the same were recorded in Gujarati, for the offences levelled against him, he was appraised of in Hindi language i.e. language known to

him and therefore, the contention of Shri Buddhbhatti, is devoid of merits and therefore, the same is required to be rejected and accordingly, it is rejected.

##. The second contention of Mr. Buddhbhatti is to the effect that admittedly, the appellant is not knowing Gujarati and whatever, the evidence led by prosecution, is recorded in Court language i.e. in Gujarati and therefore, he was not able to understand as to what evidence had been led by the prosecution, as a result of which, he could not instruct his advocate properly for his defence and it has resulted into serious prejudice to him. It may be noted that from the very beginning learned advocate Shri V.T. Aacharya was appointed for the defence of appellant in the trial Court. Admittedly, application Ex. 43 was submitted for appointment of interpreter for recording of evidence of witnesses in Gujarati. That application had been dismissed by the Trial Court on merits. Section 279 of Cr.P.C. is applicable to the present case. Sub-section (1) of Section 279 of the Cr.P.C. speaks as under :-

> "Whenever any evidence is given in a language not understood by the accused, and he is present in court in person, it shall be interpreted to him in open Court in a language understood by him".

but if the accused is represented by a pleader, then requirement of Sub-section (1) is not applicable. Sub-section (2) of Section 279 of the Cr.P.C. speaks as under :-

> "If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language".

Here in this case, Shri Aacharya, learned advocate knows Gujarati language very well and therefore, when accused is represented by an advocate, who knows Gujarati language, it is not obligatory for the Court to appoint interpreter. On this point, this Court has made the legal position clear in case of CHHOTU VS. STATE OF GUJARAT, reported in AIR 1967, Gujarat, p.115. The provisions similar to Section 279 of Cr.P.C. 1976 were there in Section 361 of Cr.P.C. 1898. The text of Sub-section (1) of Section 279 of Cr.P.C. 1973 are exactly similar to that of Sub-section (1) of Section 361 of Cr.P.C. 1898. It speaks that whenever any evidence is given in a language not understood by the accused, and

he is present in court in person, it shall be interpreted to him in open Court in a language understood by him. Sub-section (2) of Section 279 of Cr.P.C. of 1973 is also similar to Sub-section (2) of Section 361 of Cr.P.C. 1898. As per this Sub-section (2) of Section 361 of Cr.P.C. 1898, casts a duty on the Court to interpret the evidence in that language provided even the pleader appearing for the accused does not understand the language in which the evidence is given. As this Court has correctly interpreted two sub-sections of Section 361 of 1898 and held that Sub-section (1) and (2) are independent of each other and are made to meet two different contingencies - one when the accused is present in court and not represented by any lawyer and the other when he is represented by a lawyer. The word "appears" in the section 361 can hardly be understood to restrict its meaning to a pleader engaged by the accused. That includes any pleader appearing in Court on his behalf. Therefore, when a pleader whether appointed by the Court or one engaged by the accused himself appears in Court and the evidence of a witness is recorded in English which the pleader understands well, there is no question of interpreting it into Gujarati, the language known to the accused. Here in this case also, the accused was through out represented by advocate Shri V.T. Aacharya, who knows Gujarati well and therefore, question does not arise for the court to appoint interpreter for recording evidence of witnesses giving evidence in Gujarati.

##. Shri B.Y. Mankad, learned APP has also placed reliance in case of SHIVANARAYAN KABRA VS. THE STATE OF MADRAS, reported in AIR 1967 SC 986. In this case, the Hon'ble Apex Court has held that has held as under :-

> "If there is any violation of Section 361 (1) of Cr.P.C., then it is merely irregularity and same can be cured under Section 537 of old Code, if accused is not prejudiced and it has not resulted in injustice".

In view of this legal position, the appellant has to satisfy this Court that because of non compliance of Section 279, a serious prejudice has been caused to him. As discussed earlier, when we called the appellant before this Court, we have in-depth inquired by putting certain questions in simple Hindi language and we found that the appellant had visited Gujarat 6 to 7 time before the date of incident. Whenever he visited Ahmedabad, he was staying in a guest house situated in Ahmedabad. As per say of appellant, even on previous night, he was a guest of one Gujarati and therefore, when he was engaged by an

advocate knowing Gujarati, it cannot be said that a prejudice has been caused to the appellant. Even at the stage of recording of further statement, as per the note made by learned Judge of the Trial Court, the appellant was made to know about the evidence appearing against him by translating the questions from Gujarati into Hindi and the appellant has also given replies in Hindi, which were translated into Gujarati by the Court itself and the Court has noted down the answers below each question put to accused No. 1 in his further statement and therefore, the appellant is totally failed to satisfy this court that he has been seriously prejudiced by not appointing interpreter.

##. During the course of arguments, Shri Buddhbhatti, learned advocate for the appellant has not challenged the conviction on merit on any other points, except the points discussed hereinabove. We are satisfied that appellant has not been prejudiced at all, even at the time of raid and search and also during the course of trial. There is nothing on the record to come to a conclusion that impugned judgement in question is erroneous and conviction is bad in law. We found nothing wrong on record to disturb the findings arrived at by the learned Judge of the Trial Court as the finding arrived at by the learned Judge is purely on merits and in accordance with law. In view of this, the contentions taken by Shri Buddhbhatti are denied on merits and they are rejected. Accordingly, there is no substance in this appeal filed by the appellant-accused No.1 and the judgement of conviction and sentence recorded by the learned Additional Sessions Judge deserve to be confirmed.

##. Accordingly, Appeal is dismissed The order of conviction and sentence recorded by the learned Additional Sessions Judge, Ahmedabad dated 25.2.1999 in Sessions Case No. 10 of 1997 convicting the accused for the offence punishable under Section 20 read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing the accused to suffer R.I. for 12 years and pay a fine of Rs.2,00,000/- (Rs. Two lacs only) and in default, further R.I. for one year is confirmed.

Date : 8.7.2002 (D.K.Trivedi, J.)

(H.H. Mehta, J.)
pallav